IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No. 49ll of l998
Kum Annapurna S Madhavanavar
S No. 68/l0 BT Kavade Marg
Ghorpadi Gaon Pune 4ll00l.... petitioner

vs

l. State of Maharashtra
through Tribal Development Dept
Mantralaya, Mumbai.32

2. Chairman Committee for Scrutiny
and Verification of Tribe Claims
Pune 4ll00l

3. Chief Manager, Govt Milk
Scheme, Mumbai Pune Road, Pune... Respondents

Mr.R.K.Mendadkar for Petitioner
Mr. C.R.Sonawane AGP for respondents

CORAM;A.P.SHAH & S.C.DHARMADHIKARI JJ.

Dated 20.l0.2004

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l. This petition is directed against the order passed by the respondent no. 2 Committee for Scrutiny and Verification of Tribes Claims,Pune dated l7.4.l998. The family of the petitioner hails from Bijapur district which at the relevant time fell in old Bombay State. The father of the petitioner came to Pune sometime in l959/l979 and settled permanently and joined service at the Collectorate, Pune. The father of the petitioner was granted caste certificate by the competent authority on 4.6.l977 as belonging to Bhil tribe which has been declared as Scheduled Tribe by the Presidential Notification issued in exercise of powers conferred under Art 342(l) of the Constitution. The petitioner was also issued a caste certificate as belonging to Bhil tribe by the competent authority. On the strength of the said certificate the petitioner joined the services of respondent no. 3 as a Clerk-cum- Typist. Petitioner’s case was referred to the respondent. no. 2 Caste Scrutiny Committee for verification of her caste. The Scrutiny Committee after

examination of documents furnished by the petitioner found that the caste is mentioned as Bhil in all the documents. However,the Committee observed that the candidate and her father do not belong Maharashtra State and petitioner’s father is from Karnataka who came to Maharashta in l972 and therefore the petitioner is not eligible to claim the benefits of Scheduled Tribe in the State of Maharashtra. The Committee observed thus:

> "In the case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribe status is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a Caste/tribe.
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> This fact has also been upheld by the. Hon‘ble Surpeme Court in the case of Harri Chander Shekhar Rao vs Dean, Seth G S Medical College and

> others l990(3) SCC l30, as well as in the case of Action Committee on issuance of caste certificate of Scheduled Castes and Scheduled Tribes in the State of Maharashtra vs Union of India and ors in Writ Petition No. 898 of l990.
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> In view of the above discussion, the Scrutiny Committee come to the conclusion that the candidate is migrant and he is not entitled to get the concessions of Scheduled Tribes of Maharashtra State. Hence the following order is passed".

This finding of the Committee is based on the decision of the Supreme Court in the case of Action Committee on issue of Caste Certificate to Scheduled Caste and Scheduled Tribes in the State of Maharashtra and Anr vs Union of India and anr, reported in (l994) 5 SCC 244. As far as the petitioner is concerned, her caste has been classified as Scheduled Caste vide Presidential Order dated l0.8.l950. The petitioner’s father was

born in Bijapur district. Bijapur district was part of the erstwhile State of Bombay. Hence if the date of Presidential Order is taken into account the same will be applicable to the then State of Bombay which includes Bijapur district. The petitioner's father would thus be governed by the said Order on the hypothesis that he was resident of then State of Bombay. Bifurcation of the State of Bombay into State of Bombay and State of Mysore was brought about with effect from l.ll.l956 In the case of Action Committee (supra) the Supreme Court has observed thus:

> "4. The petitioners herein are aggrieved because the State of Maharashtra has denied the benefits and privileges available to Scheduled Castes and Scheduled Tribes specified in relation to that State to members of the Scheduled Castes and Scheduled Tribes belonging to other States who have migrated from other States to the State of Maharashtra. These benefits and privileges are denied

on the basis of certain circulars and letters issued by the Government of India and consequential instructions issued by the State of Maharashtra indicating that members belonging to the Scheduled Castes ad Scheduled Tribes specified in relation to any other State shall not be entitled to the benefits and privileges accorded by the State of Maharashtra unless the person concerned is shown to be a permanent resident of the State of Maharashtra on l0.8.l950 in the case of Scheduled Castes and 6.9.l950 in the case of Scheduled Tribes.These are the dates on which the President first promulgated the Constitution (Scheduled Castes) Order,l950 and the Constitution (Scheduled Tribes) Order, l950. The petitioners therefore, contend that the denial of the benefits and the privileges by the State of Maharashtra is violative of the fundamental rights conferred on citizens by Articles

l4,l5,(l), l6(2) and l9 of the Constitution , besides being contrary to the letter and spirit of Articles 34l and 342 of the Constitution. The petitioners contend that a bare perusal of the Constitution (Scheduled Castes) Order, l950 and the Constitution (Scheduled Tribes) Order, l950 as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, l976 would show the same castes and tribes specified in respect of more than one State. Those belonging to the Scheduled Castes and the Scheduled Tribes, wherever situate, are economically backward. Besides on account of social and economic backwardness they have to suffer a host of indignities and atrocities and are very often compelled to migrate from one State to another in search of livelihood or to escape the wrath of their operators. Earlier they did not experience any difficulty in

obtaining caste/ tribe certificates to secure benefits available to the Scheduled Castes and Scheduled Tribes in the State of Maharashtra. The situation, however, changed drastically after the Government of India issued a communication addressed to Chief Secretaries to all State Governments/ Union Territories on 22.3.l977. 6. The Government of India in the Ministry of Home Affairs noticed that certificates belonging to a particular Scheduled Caste/ Scheduled Tribe were not issued strictly in accordance with the principle governing the issue of such certificates presumably on account of lack of understanding of the legal position regarding the concept of the term "residence" on the part of the authorities concerned. With a view to clarifying the legal position the communication of 22.3.l977 came to be issued. The relevant part of

that communication may be reproduced for ready reference:

" As required under Articles 34l and 342 of the Constitution,the President has, with respect to every State and Union Territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various Castes and Tribes as Scheduled Castes and Scheduled Tribes in relation to that State or Union Territory from time to time. The inter- State area restrictions have been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Castes or Scheduled Tribe Status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different State/ Union Territories may not both be treated as belong to

Scheduled Caste/Tribe or vice versa. Thus, the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the liberal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/ tribe in relation to that locality. Thus a person who is temporarily away from his permanent place or abode at the time of the notification of the Presidential Order applicable in this case, say for example, to earn a living or seek education, etc, can also be regarded as Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/ tribe has been specified in that order in relation to his State/ Union Territory. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding

the fact that the name of his caste/ tribe has been scheduled in respect of that area in any Presidential Order."

The communication further states that with a view to ensuing the veracity of permanent residence of a person and that of the caste/ tribe to which he claims to belong, the Government of India made a special provision in the proforma prescribed for the issue of such certificates.In order to ensure that competent authorities should alone issue such certificates the Government of India (Department of Personnel and Administrative Reforms) by a letter dated 6.8.l975 indicated the authorities locality wise who should issue the certificates . The Communication then proceeds to add:

"Thus the Revenue Authority of one district would not be competent to

issue such a certificate in respect of persons belonging to another district. Nor can such an authority of one State/ Union Territory issue such certificates in respect of persons whose place of permanent residence at the time of the notification of a particular Presidential Order, has been in a different State/ Union Territory".

This was emphasized because only the revenue authorities of the locality of which the individual is the resident alone would have access to revenue records to be in a position to make reliable enquiries before the issuance of the certificate. In regard to persons born after the date of the notification of the relevant Presidential Order, the communication states that the place of residency for the purpose of acquiring Scheduled Castes or Scheduled Tribe certificates is the place of permanent abode of their

> parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/tribe".

6 The above observations make it clear that the relevant date for considering benefits of the Presidential Order is the date of the Presidential Order. Even the communication dated 22.3.l977 referred in the aforesaid decision of the Apex Court emphasis that in regard to persons born after the date of the notification of the relevant Presidential Order, the place of residency for the purpose of acquiring Scheduled Caste or Scheduled Tribe certificate is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/tribe.

7. In the circumstances,it is not possible to sustain the order of the Scrutiny Committee. Hence we hold that the respondent no.2 was not justified in refusing to consider the petitioner’s caste claim on the ground that she is migrant from the Bijapur district to the State of Maharashtra.

8 In light of the above we have no hesitation in setting aside the order of the Scrutiny Committee dated l7.4.l998 and the same is accordingly quashed and set aside. The respondent no. 2 is directed to grant of caste validity certificate in favour of the petitioner as belonging to Bhil Scheduled Tribe expeditiously and in any event within a period of 2 months from today.

9 Rule is made absolute accordingly with no order as to costs.